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INTERIM STUDY ON LAKESHORE DEVELOPMENT

Final Report to the 53rd
Montana State Legislature

Prepared by the Environmental Quality Council
December 1992

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House Joint Resolution 17

Lakeshore Development Study

December 1992

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Provide a local option for extending lakeshore regulations to reservoirs and constructed impoundments by amending 75-7-203, MCA.

Amend the lakeshore statute to provide authority for a local governing body to establish a lake-specific advisory committee for the purpose of assisting with the administration of the lakeshore statute.

No change should be made in the lakeshore statute to provide for increased funding for lakeshore programs in order to allow a period of time to evaluate the adequacy of the increases enacted by the 1991 Legislature.

Incentives or penalties are not needed to encourage local governing bodies to adopt lakeshore regulations pursuant to 75-7-201, MCA.

Amend 75-7-205, MCA to clarify that restoration may be required for unauthorized work on a lakeshore, and 75-7-215, MCA to clarify that a district court may hear and decide a complaint for the restoration of a lakeshore.

The penalty provisions of the lakeshore statute should be amended to add a civil penalty and authorize a local governing body to seek injunctive relief against a violator.

Motorized Watercraft

No change should be made to current regulations for motorboat noise abatement unless the change is initiated by legislators from northwest Montana.

Water Quality

The width of the lakeshore protection zone should be expanded from 20 feet to 50 feet by amending the definition of "lakeshore" in 75-7-202(2), MCA.

Federal funding should be sought for the U.S. Bureau of Reclamation to install a selective water withdrawal device at Hungry Horse Dam.

The Water Quality Bureau's request for RIT funding to establish a statewide lakes management and volunteer monitoring program should receive thorough consideration by the Legislature.

A process should be convened to develop a strategic, comprehensive statewide monitoring plan that identifies monitoring priorities, data gaps, and mechanisms for administrative coordination for water quality and water quantity monitoring of Montana's lakes, streams and groundwater. The process should involve federal and state agencies, the Montana university system, Flathead Basin Commission, and other appropriate organizations involved in water monitoring, and take place during the 1993-95 interim.

Shoreline Erosion

Conservation districts already have adequate statutory authority to address shoreline erosion problems and no additional authority is needed.

To successfully carry out their responsibilities for erosion prevention and abatement under Title 75, chapter 15, and to address the problem of shoreline erosion, conservation districts may require additional funding and staff. The EQC chose to recommend, but not undertake, a search for additional mechanisms to fund conservation district responsibilities for erosion control.

Introduction

House Joint Resolution 17, enacted by the 1991 Legislature, requested the Environmental Quality Council (EQC) to conduct an interim study on the:

> . . . need for and nature of uniform state standards regarding the protection and appropriate development of lakeshores for the protection of public health, safety and welfare.

The need for the study arose from concern that the lake regions of Montana, in particular the Seeley, Swan, and Flathead valleys, are being developed at a rapid rate, and that regulations governing this development are inconsistent from one jurisdiction to the next. Further, proponents of the resolution noted that lakeshore areas often are environmentally fragile and deserve additional attention and planning. A copy of HJR 17 is contained in Appendix A.

Issue Identification

Because the mandate in HJR 17 was fairly broad, and in order to involve the public in the design of the study, the EQC conducted an extensive issue identification process. The purpose of the process was to narrow the scope of the study to the several issues of greatest concern to the public. In addition, the Council sought to narrow the study to issues that could be addressed within the time frame of an interim.

The issue identification process involved holding public hearings during April, 1992 in Kalispell and Helena; conducting a mail survey of 124 people and organizations in northwestern Montana (see Appendix B for the responses); conducting a survey of local governing bodies about administering the lakeshore statute (see Appendix C for the responses); a panel discussion at an EQC meeting in November, 1991; public comment at several EQC meetings; and a field trip along Flathead River and Flathead and Lindbergh Lakes.

As a result of this issue identification process, the Council narrowed the focus of the study to the issues of water quality, shoreline erosion, and noise from motorized watercraft. In addition, the Council decided to evaluate the adequacy of the state's 1975 lakeshore statute. The remainder of the report is organized by chapter headings that correspond to the four topics the Council selected for study.

Section I: Lakeshore Development Statute

A. Introduction

The regulatory framework for lakeshore development consists of a patchwork of land use statutes and regulations, including planning, zoning and subdivision law, and septic requirements. As with these statutes, responsibility for regulating lakeshore development is primarily a local government function. In many respects, lakeshore development issues are representative of development and land use issues in Montana generally.

The key difference between the regulatory framework for lakeshore development and the framework for other development is the lakeshore statute (75-7-201, MCA). Enacted at the same time as the Natural Streambed and Land Preservation Act of 1975 (310 law), the stated purpose of the statute is twofold: 1) to conserve and protect Montana's natural lakes and their scenic and recreational values; and, 2) to provide local governing bodies with adequate statutory power to protect lake areas. The adequacy of this statute was a key focus of the EQC's work under the HJR 17 Study Resolution.

The lakeshore statute requires a local governing body with jurisdiction over a natural lake 160 acres or larger in size to adopt regulations that establish a permitting process for work that will "alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore" (75-7-204, MCA). Examples of activities that require a permit include the construction of channels and ditches; dredging of lake bottom areas; lagooning; filling; constructing breakwaters of pilings; and constructing wharves and docks.

An EQC survey of local governments found that five governing bodies (Anaconda-Deer Lodge, Lake, Lincoln and Flathead Counties, and the City of Whitefish) have adopted lakeshore regulations pursuant to 75-7-201, MCA. In addition, the Confederated Salish and Kootenai Tribe have adopted similar regulations for Flathead Lake.

B. Analysis of Regulatory Consistency Between Various Administrative Jurisdictions

An issue that provided impetus for the introduction and passage of the HJR 17 Study Resolution was whether different administrative jurisdictions were consistent in how they regulated and managed the development of lakeshores in

Montana. This section analyzes U.S. Forest Service requirements for regulatory consistency with local government lakeshore regulations, and consistency between the lakeshore regulations adopted by various counties pursuant to 75-7-207, MCA. The analysis concludes that the U.S. Forest Service has many procedural and substantive requirements to coordinate with local governments, and that the requirements of the five counties and one Tribe that have adopted lakeshore development regulations are remarkably consistent.

1. Consistency Between the U.S. Forest Service and County Lakeshore Regulations

Many of Montana's lakes are located on federally owned land that frequently falls under the management jurisdiction of the U.S. Forest Service (USFS). How consistent are the Forest Service's lakeshore development regulations with the regulations of local governments under the lakeshore statute (75-7-201, MCA)? Do the regulations that govern development on a lake managed by the USFS significantly differ from what a local government requires on an adjacent privately owned lake?

Under federal regulations, the USFS is required to issue "special use authorization" for all improvements on national forest lands. (36 CFR 251.50) This authorization, typically granted through a special use permit, provides the mechanism through which the USFS regulates development upon lakeshores within its jurisdiction. Specifically, in addition to large scale developments such as ski resorts, pipelines and reservoirs, special use authorization is required for smaller developments such as hotels, resorts, recreational facilities, summer homes, stores, and other facilities for public convenience or safety. (36 CFR 251.53(d))

Throughout the special use permitting process, federal regulations require the forest service to coordinate with state and local governments. These requirements take several forms.

First, there are requirements that the USFS identify and be cognizant of state statutes and local ordinances when issuing a special use permit. For example, federal regulations require that during the preapplication phase of the permitting process, the USFS must provide guidance to a potential applicant on "possible land use conflicts as identified by review of land management plans, landownership records, and other readily available sources" and on "necessary associated clearances, permits, and licenses". (36 CFR 251.54(a)) Continuing, the regulations state that an application for a special use permit at a minimum include information on "impacts on the environment; compliance with applicable laws, regulations, and orders; compliance with requirements for associated clearances, certificates, permits, or licenses . . . ." (36 CFR 251.54(e))

Second, federal regulations contain procedural requirements that direct the USFS to consult with state and local governments and to provide opportunities for public participation before granting a special use permit. Specifically, federal regulations require that: "Federal, State, and local government agencies and the public will be given adequate notice and an opportunity to comment on special use proposals . . . . " (36 CFR 251.54(f) They further state that in processing an application, the USFS will:

> . . . determine compliance with other applicable laws, regulations and orders; consult with other agencies, local officials, or interested persons and hold public meetings upon reasonable notice when sufficient interest exists to warrant the time and expense . . . . (36 CFR 251.54(f))

Third, federal regulations authorize the USFS to condition or deny a special use permit on the basis of state or local regulations. The USFS may condition authorization "to require state, county, or other federal agency license, permit, certificate or other approval document . . . or county building permit." (36 CFR 251.54(c)) In addition, the USFS may deny issuance of a special use authorization if "The use would otherwise be inconsistent with applicable Federal and State laws." (36 CFR 251.54(h))

Finally, special use permits are required to contain terms and conditions that will:

> . . .
> (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or state law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance if those standards are more stringent than applicable Federal standards . . . . (36 CFR 251.56(a))

Federal regulations provide a clear directive for the U.S. Forest Service to coordinate with state and local officials and to comply with state and local laws when granting special use permits. Consequently, while a local government may not have the legal authority to require Forest Service compliance with regulations adopted pursuant to the lakeshore statute (75-7-201, MCA), compliance is clearly the intent and requirement of the Forest Service's own regulations. If there is a lack of administrative coordination between the USFS and local governments in the management and regulation of development along lakeshores, it does not result from an absence of procedural and substantive legal requirements for coordination.

2. Consistency Between the Lakeshore Regulations of Various Counties

- **Introduction**

Is regulatory consistency a desired or required objective under the lakeshore statute? What is considered to be regulatory inconsistency to one individual may be considered necessary flexibility by another. Accordingly, it should not be assumed out-of-hand that consistency from one governing body to another in the regulation of lakeshores is: 1) desirable; or, 2) an objective of 75-7-201, MCA. In fact, the lakeshore development statute sends mixed signals on this point.

On one hand, the statute provides local governing bodies with the flexibility to develop site-specific regulations that are best suited to each particular lake. Specifically, 75-7-207(4), MCA states that:

> A governing body whose area contains more than one lake may adopt regulations in differing form for the various lakes, recognizing the physical and social differences between lakes.

The argument that it is perfectly reasonable for County A and County B to adopt inconsistent regulations, regulations that best serve each of their respective needs, seems to be a natural extension of the flexibility provided in subsection (4) above.

On the other hand, the lakeshore development statute also encourages cooperation between governing bodies. Specifically, 75-7-214, MCA states that:

> If a lake, as defined in this part, is located under the jurisdiction of more than one governing body, the governing bodies are empowered and encouraged to enter into agreements to effectuate the purposes of this part and establish compatible criteria for denial or issuance of permits.

This section of the statute sends a different message, suggesting that it is desirable for local governing bodies, at least when regulating the same lake, to establish "compatible criteria."

- **Methodology**

The results of an EQC survey of local governments found that five local governing bodies (Anaconda-Deer Lodge, Lake, Lincoln and Flathead Counties, and the City of Whitefish) and the Confederated Salish and Kootenai Tribe have adopted lakeshore development regulations. To analyze how consistent these regulations are from one jurisdiction to the next, major categories of substantive requirements (e.g., definitions used, exemptions, variances, criteria for issuance of

a permit, design standards, etc.) were identified and then contrasted. Only substantive requirements that directly effect what happens on the lakeshore were evaluated; differences in procedural requirements were not considered.

- **Results of Analysis**

The lakeshore regulations of the three governing bodies on Flathead Lake (Lake and Flathead Counties and the Salish-Kootenai Tribe) and the City of Whitefish are similar, which in part, is probably a result of their common heritage. The first lakeshore development regulations in the state were adopted by Lake County in 1975. Flathead County and the Salish-Kootenai Tribe followed suit shortly thereafter, adopting regulations modeled largely after those developed by Lake County. The City of Whitefish later adopted its own regulations with assistance from and with the cooperation of Flathead County. Largely, the four sets of regulations share the same policy orientation, have similar criteria for issuing construction permits, nearly identical requirements for variances and non-conforming uses, and design standards that are relatively consistent.

While the regulations are very similar, they are not identical. The language in and nuances of the regulations vary from one jurisdiction to the next, and in some instances there are inconsistencies in what the regulations cover and substantive differences in design standards. However, these differences seem relatively insignificant. Several representative examples may help to illustrate the point:

1) Flathead County allows docks to extend 60 feet into the lake while Lake County allows them to extend only 50 feet;

2) The Salish-Kootenai Tribal regulations contain policy criteria for the issuance of a permit that go beyond what is found in county lakeshore regulations (e.g., a proposed structure must not interfere with the exercise of tribal treaty fishing rights, or disrupt cultural, historical, or archeological sites);

3) The City of Whitefish does not permit private individual boat ramps while other jurisdictions do; and,

4) Lake County has more specific construction standards for retaining walls than other jurisdictions.

The Lincoln County lakeshore development regulations are consistent with but less comprehensive and detailed than the four sets of regulations discussed above. Lincoln County's regulations contain the same general requirements but lack the detailed and explicit design standards that are required on Flathead and

Whitefish lakes. The lack of design standards may be the result of less development pressure on Lincoln County lakes.

Anaconda-Deer Lodge County has taken a slightly different approach in developing lakeshore development regulations, although its requirements are similar to those of other local governing bodies. Anaconda-Deer Lodge County has developed a permit system that integrates the procedures for the permitting of subdivisions, lakeshore development, and airports. Within this permit system, the lakeshore regulations are similar to those of Lincoln County in that they provide the same general requirements but lack detailed and explicit design standards.

- **Conclusion**

The requirements of the five governing bodies and one Tribe that have adopted lakeshore development regulations are largely similar and consistent. While differences in requirements do exist, they seem relatively insignificant and may be the result of variations in local conditions and needs. In the case of Flathead Lake, the three governmental entities that administer lakeshore development regulations have remarkably similar requirements.

A larger issue than inconsistencies between different counties' lakeshore regulations is the failure of some counties (e.g., Missoula) to even adopt regulations by January 1, 1976, as required by 75-7-201, MCA. The differences in requirements between a county that has adopted lakeshore regulations and one that has not far exceed the differences in requirements between any two counties with lakeshore development regulations.

C. Issues, Options and Recommendations

A number of issues related to the Lakeshore statute (75-7-201, MCA) were brought to the EQC's attention through public hearings, testimony and panel presentations at EQC meetings, and two surveys conducted by EQC staff. This section describes each issue, the response options the Council considered, and the Council's final recommendations. Please note that one option not listed but which is implied and was considered for each issue is the "no action" option.

1. Should Lakeshore Regulations Apply to Reservoirs and Rivers?

- **Issue**

The definition of "lake" provided in 75-7-202, MCA is a standing body of water that: 1) occurs **naturally**; 2) has a surface area of at least **160 acres** for at least 6 months of the year; 3) is not used exclusively for agricultural purposes;

and, 4) is navigable by canoes and small boats. A natural lake whose level has been raised by a constructed impoundment is also considered a lake for the purposes of the statute.

The statute provides local governing bodies with the flexibility, if they so desire, to regulate lakes smaller than 160 acres in size. A local governing body may, by resolution, change the minimum size of a lake to a natural lake with a surface area of no less than 20 acres (75-7-203, MCA).

The definition of the term "lake" is a key component of the statute, because it determines which bodies of water fall within and outside the jurisdiction of the statute. For example, the existing definition excludes reservoirs from lakeshore regulations, some of which, either now or in the future (e.g., Canyon Ferry Reservoir, Georgetown Lake and Hebgen Lake), may face development pressures similar to those on natural lakes such as Flathead Lake. The statute also is ambiguous about how to treat a river inlet or outlet. Where does a lake end and a river begin? Typically, the head of a lake narrows and becomes a river outlet, which then constricts even further to form a river. While development may be continuous along the shoreline of the lake, lake outlet and river (e.g., where the Clearwater River flows out of Seeley Lake), the lakeshore statute only addresses that portion of the development that is on the lakeshore.

- **Options Considered**

The EQC considered the following options for extending lakeshore regulations to reservoirs and rivers:

a. Include reservoirs in the definition of a lake by amending 75-7-201, MCA;

b. Provide a local option for extending lakeshore regulations to reservoirs and constructed impoundments. This would be accomplished by amending 75-7-203, MCA to allow a local governing body, by resolution, to change the definition of a lake to include reservoirs and constructed impoundments;

c. Clarify the authority of conservation districts under the Natural Streambed and Land Preservation Act (75-7-101, MCA) to make clear that they have the authority to administer the 310 law on reservoirs. (Note: DNRC legal counsel has issued an opinion stating that it is unclear whether or not conservation districts presently have this authority.); and,

d. Extend the provisions of the lakeshore statute to include rivers and river inlets and outlets.

- **EQC Recommendation**

The EQC's recommendation is option (b). While the option of clarifying the authority of conservation districts to administer the 310 law on reservoirs was appealing, the Council was concerned about placing additional burdens on already overworked conservation districts. This concern stemmed from a tour of Flathead Lake and River where the Council heard about the difficult time the Flathead Conservation District has had keeping up with 310 permits and shoreline erosion problems.

Because not every reservoir faces or is likely to face development pressures, the Council felt that option (a) was excessive. The selected option (b) provides increased flexibility to local governments with lakeshore regulations to extend those regulations to the reservoirs that face pressure from development. The Council felt that only local governments that both see a problem and believe they have the resources to address it are likely to exercise this authority.

The option of extending lakeshore regulations to rivers was deemed to be outside the scope of the study. Also, the Council felt that, at least in part, conservation districts through the 310 permitting process have the ability to address some of the same concerns that lakeshore regulations address.

Final Recommendation:

Provide a local option for extending lakeshore regulations to reservoirs and constructed impoundments by amending 75-7-203, MCA.

2. Provide for Lake Advisory Committees

- **Issue**

At the EQC's April 1st hearing in Kalispell on the lakeshore study, several people requested that the lakeshore statute be amended to provide for lake-specific advisory committees. Specifically, Flathead County is using such an advisory committee for Whitefish lake, and would like the committee's existence and duties codified.

- **Option Considered**

a. Amend the lakeshore statute to provide authority for a local governing body to establish a lake-specific advisory committee for the purpose of assisting with the administration of the lakeshore statute.

- **EQC Recommendation**

The EQC chose to recommend this option as a mechanism to increase the involvement of local people in decisions about lakeshore development and to relieve the workload on the local governing body.

Final Recommendation:

Amend the lakeshore statute to provide authority for a local governing body to establish a lake-specific advisory committee for the purpose of assisting with the administration of the lakeshore statute.

3. Funding for Local Governing Body Lakeshore Programs

- **Issue**

Results of the EQC staff survey of local governing bodies identified inadequate funding as a significant limitation to the implementation of lakeshore regulations. During the lakeshore hearing in Kalispell, a builder commented that limited county resources can affect the length of time it takes to process a permit application (although there is a statutory 90 day time frame for acting on a permit application). Several other people commented generally that the legislature should not impose duties and responsibilities on local government without providing adequate funding.

The lakeshore statute currently allows a local governing body to charge permit application fees. The 52nd Legislature enacted SB 437 (sponsored by Sen. Brown and Rep. Boharski) which increased the amount of the fee from its original level of $10. The new fee schedule requires the fees to reasonably address the cost of administering the permit application, and caps the fees at the following limits:

* $25 for residential permits not requiring a variance from the local governing authority;

* $60 for residential permits requiring a variance from the local governing authority;

* $60 for commercial permits not requiring a variance from the local governing authority; and

* $150 for commercial permits requiring a variance from the local governing authority. (75-7-210, MCA)

In Flathead and Lake Counties, the new fee levels will annually generate an estimated $4,000 to $5,000 of revenue. While this amount is a significant increase from the amount generated by the $10 permit fee, it is only adequate to support between a quarter and a third of the estimated $15,000 to $20,000 annual lakeshore program budget for each county.

- **Options Considered**

a. Increase fee levels; or

b. Develop and fund a state grant program (which might also provide an incentive for local governing bodies to develop lakeshore regulations).

- **EQC Recommendation**

The EQC chose to recommend that no change be made in the lakeshore statute.

Final Recommendation:

No change should be made in the lakeshore statute to provide for increased funding for lakeshore programs in order to allow a period of time to evaluate the adequacy of the increases enacted by the 1991 Legislature.

4. Incentives for Local Governing Bodies to Develop Lakeshore Regulations in Compliance with 75-7-207, MCA.

- **Issue**

The lakeshore statute requires each governing body with jurisdiction over an area containing a natural lake 160 acres or larger in size to adopt lakeshore

regulations by January 1, 1976. The EQC staff survey of local governing bodies revealed that of the 13 governing bodies that say they have jurisdiction over a lake, only five have adopted regulations pursuant to the requirement in 75-7-207, MCA. Missoula County stands out as an example of a county that has not adopted regulations but whose lakes face significant pressure from development.

- **Options Considered**

a. Amend the lakeshore statute to provide a penalty for noncompliance;

b. Establish incentives for compliance (e.g., funding);

c. Require a state agency to develop regulations for local governing bodies that have not done so. (Note: the DNRC currently has authority to adopt regulations for a specific lake upon request by 5 owners or 30% of the owners of land abutting a lake. Such a request has never been made.); or

d. Write to the local governing bodies that have failed to comply with 75-7-207 and request them to explain their failure to adopt regulations and their future intentions.

- **EQC Recommendation**

The EQC selected option (d), and wrote to ten counties that contain natural lakes but have never adopted lakeshore regulations and asked them: 1) Why they had not adopted lakeshore regulations pursuant to 75-7-201, MCA; 2) Whether they intend to adopt regulation in the future; and, 3) If they do not intend to adopt regulations, why not?

The responses the Council received to its letter indicated that most counties had not adopted lakeshore regulations because either the lakes under their jurisdiction are located on federal land, or there is no development on the privately owned lakes. An exception was Missoula County, which said it was now in the process of adopting lakeshore development regulations. After reviewing these responses, the Council decided that no other action on this issue was warranted.

Final Recommendation:

Incentives or penalties are not needed to encourage local governing bodies to adopt lakeshore regulations pursuant to 75-7-201, MCA.

5. Clarify Use of the Terms "Lake" and "Lakeshore"

- **Issue**

This issue was raised by an official from a local governing body. The lakeshore statute defines the terms "lake" and "lakeshore", and generally makes

reference to both when referring to one or the other; however, there are two exceptions. In 75-7-205, MCA, the statute provides for restoration of the lake following a disturbance by work performed, but not the lakeshore:

> **Unauthorized work.** A person who performs work in a lake after May 1, 1975, without a permit for that work shall, if required by the local governing body or the district court, restore the lake to its condition before he disturbed it.

A related exception concerns judicial review of restoration orders:

> **Judicial enforcement and review.** The district court may hear and decide the following cases arising under this part within the district:
> (1) a complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in a lake . . . . (75-7-215, MCA)

- **Option considered**

a. Amend 75-7-205, MCA to clarify that restoration may be required for unauthorized work on a lakeshore, and 75-7-215, MCA to clarify that a district court may hear and decide a complaint for the restoration of a lakeshore.

- **EQC Recommendation**

The EQC chose to recommend this option which it viewed as a housekeeping item to clarify what clearly was within the intent of the lakeshore statute.

Final Recommendation:

Amend 75-7-205, MCA to clarify that restoration may be required for unauthorized work on a lakeshore, and 75-7-215, MCA to clarify that a district court may hear and decide a complaint for the restoration of a lakeshore.

6. Are the Penalty Provisions Adequate?

- **Issue**

This issue was raised by a panelist at the November, 1991 EQC meeting, as well as in responses from the local governing body survey. Under 75-7-216, MCA a violation of the lakeshore statute is a misdemeanor and punishable by 30 days in jail, a fine of $500, or both. However, because of the stigma associated with a criminal penalty, and the burden of proof required for prosecution, county prosecutors often are reluctant to enforce violations. As a result, the penalty provisions of the lakeshore statute are ineffective.

- **Options Considered**

a. Replace the criminal penalty with a civil penalty;

b. Maintain the criminal penalty but add a civil penalty; or

c. Provide the local governing body with the authority to seek injunctive relief.

- **EQC Recommendation**

The EQC chose to recommend options (b) and (c). The Council felt that a governing body should have greater flexibility and broader authority to enforce violations of the lakeshore statute.

Final Recommendation:

The penalty provisions of the lakeshore statute should be amended to add a civil penalty and authorize a local governing body to seek injunctive relief against a violator.

Section II: Motorized Watercraft Noise

A. Introduction

The issue of noise from jet skis and motorboats was the focus of a great deal of public testimony and written comment throughout the EQC's lakeshore development study; more people expressed a concern about this issue than any other. At the scoping hearings in Kalispell (4/1/92) and in Helena (4/2/92), and at the EQC meeting in Big Fork (5/15/92), the Council heard more complaints about noise from motorized watercraft than about water quality or shoreline erosion. Of the 124 respondents to the EQC's citizen survey (see Appendix B, p. 37), 101 (82%) identified noise as a severe, moderate or minor problem on Montana's lakes. As during public testimony at Council meetings, many survey respondents specifically mentioned jet skis as the source of the noise problem. In addition, the Council received numerous letters and phone calls from homeowners along lakes who wished to make known their concern about what they perceive to be recent increases in noise from watercraft.

What is the problem that motorized watercraft noise creates for some people? The conflict arises principally between lakeshore homeowners seeking quietness and solitude, and recreationists (many of whom may also be homeowners) seeking to enjoy their watercraft. For example, a Lake County resident testified that he was considering selling his home on Flathead lake as a result of noise from jet skis; an Echo lake property owner testified that he lost rental income as a result of motorboat noise; others testified about not being able to enjoy dinner on their deck, or an afternoon nap in their bedroom. Some people also mentioned the affects of watercraft on nesting waterfowl, in particular loons.

B. Current Noise Regulations

Current Montana statute has three provisions that address motorized watercraft noise: the 86 dbA at 50 feet pass-by measurement; the 90 dbA exhaust measurement; and, a special 75 dbA shoreline measurement requirement for Flathead, Swan and Echo lakes. The requirements and implementation problems associated with each provision are discussed below.

1. 86 dbA at 50 Feet Pass-By Measurement

The first effort to regulate motorized watercraft noise in Montana came in 1983 when the legislature adopted a noise standard based upon model legislation

developed by the National Association of Boating Law Administrators. Montana Code Annotated 23-2-526(3) provides that:

> . . . the operation of a motorboat or personal watercraft that emits noise in excess of 86 dbA when measured at a distance of 50 feet . . . is presumed to be a public nuisance and constitute disorderly conduct . . . .

This standard applies to watercraft operated on all waters of the state, and has been enforced by Department of Fish, Wildlife and Parks (DFWP), largely upon receipt of a complaint. For the purposes of law enforcement, this standard has its drawbacks. The measurement procedure requires that a sound level meter be placed at a precise distance (50 feet) from a measured course through which a boat is travelling at maximum speed. As a result, to enforce this standard, a warden must stop a suspected violator, set up a course, station a sound meter 50 feet from the course, and ask the operator to drive the boat through the course at maximum speed. At best, this measurement procedure is impractical and potentially dangerous. It also may be difficult to convict a violator because when a violation occurs, the operator is operating at the direction of a warden.

2. 90 dbA Exhaust Measurement

The 1991 Legislature, largely in response to the lobbying of the Flathead Lakers, a group of over 600 members who are primarily homeowners on Flathead lake, enacted HB 833. Carried by Representative Tom Lee (R-Bigfork), HB 833 established the 90 dbA exhaust measurement standard, and special noise standards for Echo, Flathead, and Swan lakes. Both standards are based upon the work of a taskforce established by the Society of Automotive Engineers (SAE).

The 90 dbA Exhaust Measurement standard, which applies to all watercraft statewide, requires that:

> . . . the operation of a motorboat or personal watercraft that . . . emits exhaust noise in excess of 90 dbA when measured 1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats (SAE J2005) is presumed to be a public nuisance and constitute disorderly conduct . . . . (23-2-526(3), MCA)

FWP wardens report that implementation of the muffler requirement has been quite successful. The measurement is easy to obtain, most boats with a muffler pass the test, and the requirement provides wardens an opportunity to educate watercraft owners and operators about the effect of motorized watercraft noise. A boat that is too noisy, and fails the test, typically can pass by improving

the muffling of its exhaust. According to FWP, this procedure "provides law enforcement officials with a safe method of evaluating exhaust noise levels which can be readily performed anywhere on the water."

3. 75 dbA Shoreline Measurement

HB 833 also added a special, more restrictive noise standard on certain lakes with high population density and heavy recreational use. This standard, the procedure for which is referred to as SAE J1970, is the second standard developed by a taskforce of the Society of Automotive Engineers. Montana Code Annotated 23-2-523(9) states that:

> The population density and heavy recreational use of certain lakes require a noise standard more restrictive than the standard set in 23-2-526, in order to protect the public health and safety. Unless operated on a river or stream in compliance with a commission rule adopted under 23-2-521(9), a person may not operate a motorboat or personal watercraft on Flathead Lake, situated in Lake and Flathead Counties, Echo Lake, situated in Flathead County, or Swan Lake, situated in Lake County, in proximity to the shoreline if the noise emitted is greater than 75 dbA measured at the shoreline in accordance with the shoreline sound level measurement procedure (SAE J1970).

The SAE J1970 shoreline measurement procedure is nearly impossible to comply with in western Montana, and as a result, is unenforceable. The procedure, in order to produce valid measurements, requires the area surrounding the testing microphone to be free of obstructions and reflecting surfaces for a minimum of a 100 foot radius. Obstructions and reflecting surfaces that can affect the measurement results include buildings, high embankments, hills, sea walls and large piers. There are very few locations on Flathead, Swan and Echo lakes that meet this 100 foot radius requirement. As a result, when the measurement procedures cannot be met, FWP wardens have been reluctant to issue citations, and the Flathead County Attorney has stated that he will not prosecute violators. As of September 1992, no citations have been issued for a violation of this standard.

While the 75 dbA standard is unenforceable, FWP believes that the requirement has provided a successful vehicle for educating boaters about noise, and that most boaters are willing to operate their watercraft at a distance from shore that limits shoreline noise.

C. Background Information: What is a dbA?

The noise standards in Montana statute are presented in terms of decibels, or dbA. This section provides a primer on the decibel unit of measuring sound, and a reference point for different decibel levels.

The human ear detects sound by receiving pressure waves (similar to ripples caused by a rock thrown in a lake) that are created by changes in air pressure. A decibel (dB), the unit of measure used to express the intensity or loudness of a sound, is a ratio between the standard reference air pressure and the air pressure produced by a sound wave. For example, when hands are clapped, a sound wave is created by the molecules in the air being forced together. In simple terms, the intensity of the sound, or decibel level, is then measured by comparing the ratio of the surrounding air pressure with the air pressure produced by the handclap.

It is important to remember that because decibels are measured on a modified logarithmic scale, decibel readings cannot be compared directly. The rule of thumb is that when the sound level increases by 10 decibels, the "loudness" of the sound doubles. For example, an 85 decibel sound is perceived by the human ear to be about twice as loud as a 75 decibel sound. So an increase of several decibels represents a rather large change in the perceived loudness of a sound.

The intensity of a sound is not the only factor that affects a sound's perceived loudness. The apparent loudness of a sound to the human ear also depends upon the pitch or frequency of the sound. Consequently, sound level meters are constructed to take into account the hearing sensitivity of the ear at various frequencies, and weight them accordingly. There are four scales (A, B, C, or D) commonly used for response-weighting sound level meters. When a decibel is measured using an A-scale weighting factor (the scale that most closely coincides with the perception of sound by the human ear), the unit of measurement is referred to as a decibel-A scale, or dbA. Personal water craft are an example of a case where the pitch of the sound -- rather than the loudness of the sound -- is the source of irritation to the human ear.

So how loud is a 90 dbA noise? As a reference point, a very soft whisper is about 30 dbA, while a jet takeoff can be 130 dbA. Noise causes discomfort at levels of 100-120 dbA, and higher levels can cause pain. Some hearing loss may occur from sustained exposure to levels of 75-90 dbA. (The preceding discussion of the physics of sound is largely adapted from: Purdom, Walter, and S. Anderson. 1980. Environmental Science. Charles E. Merrill Publishing Co. pp. 378-398.)

D. Response Options for Abating Motorized Watercraft Noise

The EQC considered the following five options for abating noise created by motorboats and personal watercraft:

1. Clarify the Authority of the FWP Commission

The Fish, Wildlife and Parks Commission, under existing statute, has the authority to either close certain waters to motor-propelled watercraft or to regulate their operation through rulemaking. Specifically, the Commission is authorized to:

> . . . adopt and enforce rules governing . . . public lakes, rivers, and streams which are legally accessible to the public . . . . These rules shall be adopted in the interest of public health, public safety, and protection of property in regulating . . . boating, including but not limited to boating speed regulations, the operation of motor-driven boats, water skiing, surfboarding . . . . (87-1-303(2), MCA)

Using this authority, the department through rulemaking has closed 16 lakes and ponds around the state to motor-propelled craft; closed two lakes and one reservoir to boats with motors of greater than 10 horsepower; placed "no wake speed" requirements on all or a portion of 19 lakes and reservoirs; and, closed 2 lakes to all but manually operated boats and boats powered by electric motor. (A.R.M. 12.6.901)

Although the Fish, Wildlife and Parks Commission has the authority to either close lakes to motorboats or regulate motorboat operation, section 87-1-303(2), MCA limits the scope of such rulemaking to reasons of "public health, public safety, and protection of property . . . ." It is not clear from this language whether or not the commission has the authority to adopt rules on the basis of excessive motorboat noise. While some consider the definition of public health, in its broadest sense, to include health threats from excessive noise, the commission has never adopted rules to close or regulate a waterbody on this basis. Furthermore, the department's legal counsel believes such rulemaking may be beyond the scope of the authority granted in 87-1-303(2), MCA.

This option would amend 87-1-303, MCA to clarify that the commission can promulgate rules for motorboats and personal watercraft solely on the basis of noise abatement.

Section A. Section 87-1-303, MCA, is amended to read:
"87-1-303. Rules for use of lands and waters. (1) The commission may adopt and enforce rules governing uses of lands acquired or held under easement by the commission or lands which it operates under agreement with or in

conjunction with a federal or state agency or private owner. The rules shall be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements shall itemize uses as listed in 87-1-209.

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams which are legally accessible to the public or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules shall be adopted in the interest of public health, public safety, noise abatement, and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats and personal watercraft, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas which are legally accessible to the public. These rules are subject to review and approval by the department of health and environmental sciences as to public health and sanitation before becoming effective. Copies of the rules shall show that endorsement."

2. Provide a Local Option for Noise Abatement

This option builds upon the long standing role of the Fish, Wildlife and Parks commissions in regulating boat operation to establish a formal process for local landowners to petition the commission to close lakes or portions of lakes for reasons of noise abatement.

NEW SECTION. **Section B. Local option for noise abatement regulations.** (1) Upon petition of 51% of the owners of land abutting a lake, the commission may adopt regulations to abate motorboat noise for that particular lake.

(2) Upon petition of 51% of the owners of land abutting a bay, cove, or other portion of a lake, the commission may adopt regulations to abate motorboat noise for that particular portion of a lake. In deciding to adopt such regulations, the commission shall consider factors including but not limited to:

(a) the size of the lake and the size of the portion of the lake subject to regulation;

(b) the nature of the petition and types of land uses and recreational uses on that portion of the lake; and,

(c) the department's ability to implement such regulations.

(3) The commission may adopt noise abatement regulations pursuant to subsections 1 and 2 that include but are not limited to closures or use restrictions for particular types of motorboats or personal watercraft, speed limits, no wake zones, boat motor horsepower limits, and other operating requirements.

(4) The commission may at its discretion adopt temporary or trial rules pursuant to subsections 1 and 2 for a period not to exceed 2 years.

(5) The provisions of the Montana Administrative Procedure Act 2-4-101, MCA apply to rulemaking conducted pursuant to [this section].

3. Provide Special Regulations for Operation of Personal Watercraft (Jet Skis)

Fish, Wildlife and Parks wardens believe that personal watercraft (e.g., jet skis) are the single largest source of noise irritation to the public. This seems to be confirmed by the EQC's citizen survey conducted last fall, and by informal discussion this summer with Lindbergh Lake homeowners and members of the Flathead Lakers. In addition, the Salish-Kootenai Tribal government has received so many complaints about jet skis that they have decided to develop special regulations for them. This option would place additional regulations on personal watercraft by amending 23-2-531, MCA as follows:

Section C. Section 23-2-531, MCA, is amended to read:

"**23-2-531. Personal watercraft operation.** In addition to all other applicable provisions in this part, a person may not operate a personal watercraft:

(1) unless each person operating or riding on the vessel is wearing a United States coast guard approved type I, II, III, or V personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch unless the lanyard is attached to the operator's person, clothing, or personal flotation device as is appropriate for the specific vessel; ~~or~~

(3) in a reckless or negligent manner. Actions prohibited in 23-2-523 are considered reckless operation; or

(4) within 200 yards of the shoreline of a lake, except for egress and ingress which must be at a speed of no more than 10 miles per hour."

4. Expand the Scope of the 75 dbA Shoreline Measurement Standard to Additional Lakes

According to FWP, while the 75 dbA Shoreline measurement standard is not enforceable, it has successfully provided a vehicle for educating boat operators. The department believes that there have been fewer problems on Echo, Flathead and Swan lakes since the enactment of HB 833, and the Flathead Lakers seem to agree. This option would expand the scope of the 75 dbA shoreline measurement standard, so that the standard applies: 1) statewide; or, 2) to an expanded list of lakes. The effect of this option for those specified lakes would be to replace the existing 86 dbA at 50 feet pass-by measurement with the 75 dbA shoreline measurement standard.

5. Make the 75 dbA Shoreline Noise Standard Enforceable

The SAE J1970 shoreline sound level measurement procedure requires the area within a 100 foot radius of the testing microphone to be free of obstructions and reflective surfaces in order to obtain a valid sound measurement. As discussed earlier, this condition is difficult to meet on lakes in western Montana, making the standard unenforceable for all practical purposes. Options for making the standard enforceable include:

- Delete all references to the SAE J1970 methodology from state statute;
- Adopt a Montana methodology that is identical to SAE J1970 but without the 100 foot radius requirement; or
- Drop the shoreline measurement procedure entirely and rely exclusively upon the 90 dbA Exhaust measurement.

E. EQC Recommendation

After much deliberation, the EQC rejected each of the options described above, and decided to recommend no change to the current regulations for motorboat noise abatement. The Council felt that noise from motorized watercraft is a regional rather than statewide problem, and that the issue is best dealt with by local residents and legislators.

The Council also decided to recommend no change to the 75 dbA shoreline sound level measurement procedure. While the standard may not be enforceable, the Council felt that the requirement was a successful educational tool.

Final Recommendation:

No change should be made to current regulations for motorboat noise abatement unless the change is initiated by legislators from northwest Montana.

Section III: Water Quality

A. Introduction

According to the results of the EQC's citizen survey, the effect of lakeshore development that most concerns Montanans is a possible decline in water quality. When asked to rate the condition of Montana's lakes, 88% of the respondents said there was a water quality problem, with 54% indicating the problem is moderate in degree. Almost 60% said that, in lakes they use most frequently, water quality has declined over the past five years. Water quality was identified most frequently as the problem that should be considered by the EQC, and the following issues were addressed under the lakeshore study:

B. Issues, Options and Recommendations

1. Width of the Lakeshore Protection Zone

- Issue

The definition of "lakeshore" under the lakeshore statute (75-7-201, MCA) is the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within **20 horizontal feet** from that high-water elevation. This 20 foot setback from the highwater mark, commonly referred to as the lakeshore protection zone (LPZ), is an area where development generally is not permitted (except for docks, breakwaters, etc.). The landward edge of the LPZ demarcates the end of the local governing body's jurisdictional authority under lakeshore regulations. The integrity of the LPZ and its vegetation is considered to be important for maintaining water quality. Shoreline vegetation acts as a filter, trapping sediment that might otherwise run into the lake, and stabilizes the shoreline thus preventing erosion. Water quality experts and local planners testified before the EQC that a 20 foot LPZ is not adequate to protect water quality and that its width should be expanded to 50 feet.

The LPZ concept is not unique to the lakeshore statute. Local zoning and subdivision ordinances establish a similar buffer zone, generally 50 feet in width. Along lakes and rivers where timber is harvested, the Streamside Management Zone Act (77-5-301, MCA) also establishes a 50 foot zone.

- **Option Considered**

a. Expand the width of the LPZ from 20 feet to 50 feet by amending the definition of "lakeshore" in 75-7-202(2), MCA.

o **EQC Recommendation**

The EQC chose to recommend this option as a measure to protect water quality and to maintain consistency with other regulations.

Final Recommendation:

The width of the lakeshore protection zone should be expanded from 20 feet to 50 feet by amending the definition of "lakeshore" in 75-7-202(2), MCA.

2. Selective Withdrawal at Hungry Horse Dam

- **Issue**

This issue was brought to the Council's attention at a public hearing and EQC meeting in the Flathead valley. Numerous citizens testified about the need for action from the state's Congressional delegation to obtain the funding necessary to moderate the temperature of the water released from Hungry Horse Dam. The frigid 40°F water released from Hungry Horse Dam drastically reduces fish growth rates in the lower reaches of the South Fork of the Flathead River, and stresses fish and insect food sources in the Main Stem of the Flathead River when the 40°F water of the South Fork converges with the 65°F water of the Main Flathead River. The installation of a selective withdrawal device would allow dam managers to withdraw warmer water from different depths of the reservoir, thereby returning near natural temperatures to the Flathead River. While the Northwest Power Planning Council has amended its Columbia Basin Fish and Wildlife Program to direct the Bonneville Power Administration and Bureau of Reclamation to take action to allow for selective withdrawal from Hungry Horse, this project has yet to be funded.

- **Option Considered**

a. Seek federal funding for the U.S. Bureau of Reclamation to install a selective withdrawal device at Hungry Horse Dam.

- **EQC Recommendation**

The EQC chose to recommend this option, and wrote the members of the Montana Congressional delegation to request their assistance in seeking federal funding for selective withdrawal. Responses from the state's Congressional delegation indicate that they recognize the importance of the Hungry Horse project, and will work during the next Congress to obtain funding for it. However, they expect an uphill battle.

Final Recommendation:

Federal funding should be sought for the U.S. Bureau of Reclamation to install a selective water withdrawal device at Hungry Horse Dam.

3. Funding for Water Quality Monitoring

- **Issue**

Of the 10,000 lakes the U.S. Environmental Protection Agency (EPA) has identified in Montana, some information is available on water quality for about one-fifth of them. Most of this information, however, is extremely limited and inadequate to establish baseline conditions or to inform basic management decisions. The cases, such as for Flathead Lake, where scientists have a good understanding of the physical and chemical properties of water and lake biota, are the exception rather than the norm.

The Water Quality Bureau (WQB) of the Department of Health and Environmental Sciences (DHES) does not have adequate staff to conduct lake water quality monitoring. However, in order to leverage an EPA 50 percent matching grant, the WQB has been considering a proposal to establish a statewide lakes management and volunteer monitoring program. This program would require one FTE to serve as volunteer monitoring coordinator and an annual operating budget of $70,000. Under the proposal, funding would come from the interest from the RIT account.

- **Option Considered**

a. Endorse the Water Quality Bureau's request for RIT funding to establish a statewide lakes management and volunteer monitoring project.

o **EQC Recommendation**

The EQC chose to recommend this option.

Final Recommendation:

The Water Quality Bureau's request for RIT funding to establish a statewide lakes management and volunteer monitoring program should receive thorough consideration by the Legislature.

4. Water Quality/Quantity Monitoring Assessment

- **Issue**

Responsibility for water monitoring in Montana is fragmented in several ways. First, water monitoring is fragmented across **multiple agencies**. An incomplete count shows at least four federal agencies (Bureau of Land Management, U.S. Geological Survey, USFS, National Park Service), five state agencies (Department of Agriculture, DHES, Department of Natural Resources and Conservation, Department of State Lands, DFWP), and three units of the university system (Montana State University, Montana Bureau of Mines and Geology, University of Montana) involved in water monitoring in the state.

Second, water monitoring in the state is programmatically fragmented between **water quality and water quantity** monitoring. For example, at the state level, the DNRC is responsible for issuing and administering water use permits and funds, and operates water quantity gauging stations accordingly. The DHES, charged with administering various programs to protect water quality, monitors water quality. There is little coordination between these two agencies, even if they are monitoring the same water body. This programmatic fragmentation also occurs at the federal level of government.

A third way in which monitoring is fragmented is by **funding priorities**. No mechanism exists to allow the state to make strategic, long-term decisions about its monitoring priorities, and to fund them accordingly. Instead, each agency -- both federal and state -- independently pursues funding for monitoring based upon its specific project needs and priorities. As a result, while individual agency project needs may be met, it is not clear that the states limited monitoring funds are going to the highest priority projects. This is particularly a problem in the present era of

declining budgets, where agency monitoring budgets are commonly among the first to receive cuts, and long-term monitoring stations are being eliminated.

Finally, the collection and storage of monitoring data is fragmented. While several databases have been established for storing monitoring data (e.g., STORET and WATSTORE), not every agency uses them. Some data remain in reports and are never computerized so that others have access to them; other data are "lost" in the computers of various consultants who have contracts with state agencies. Some agencies design databases to meet their specific project needs, but then fail to make the information available to a central clearing house like the Natural Resource Information System. The result of this fragmentation is uncertainty about what data exist and the inability of agencies and individuals to access and use data that have been collected.

- **Option Considered and Recommended**

Final Recommendation:

A process should be convened to develop a strategic, comprehensive statewide monitoring plan that identifies monitoring priorities, data gaps, and mechanisms for administrative coordination for water quality and water quantity monitoring of Montana's lakes, streams and groundwater. The process should involve federal and state agencies, the Montana University system, Flathead Basin Commission, and other appropriate organizations involved in water monitoring, and take place during the 1993-95 interim.

The EQC committed itself to undertaking this task during the next interim.

Section IV. Shoreline Erosion

A. Introduction

Public concern about shoreline erosion, as expressed to the Council, centered on Flathead Lake and the operation of Kerr Dam. As mentioned earlier, the EQC citizen survey revealed that about 79% of the respondents believe shoreline erosion is a problem. However, most of these responses came from people concerned about Flathead Lake, and written comments frequently mentioned Kerr Dam. In addition, nearly all of the comments received on shoreline erosion at the public hearing in Kalispell and the EQC meeting in Big Fork concerned impacts on Flathead Lake or Flathead River from the operation of Kerr Dam.

Generally, the fluctuation of water levels that results from dam/hydro-power operations is the most significant factor affecting shoreline erosion in reservoirs. When drastic changes in water level occur repeatedly over short time spans in areas with naturally unstable soils, banks begin to erode and slump. While shoreline erosion can still be a problem in natural, unregulated lakes with similar soils, shoreline erosion commonly is most acute on reservoirs.

B. The Physical Process of Erosion

Dr. Richard Hauer, University of Montana, Flathead Biological Station, appeared before the Council at its May 15th meeting in Big Fork to discuss water quality issues. This section summarizes his comments on the process of shoreline erosion and its relationship to water quality.

Dr. Hauer began by explaining that shoreline erosion is a problem because it results in decreased water quality. As a shoreline erodes, it adds sediment that, in addition to filling in the lake, releases nutrients into the lake (nutrient loading). These nutrients are then taken up by algae, macrophytes and other aquatic plants, increasing their growth rates. This nutrient loading-increased plant growth cycle hastens the ageing process of a lake (eutrophication), more quickly turning it from a deep, cold, clear-watered lake (oligotrophic lake) into a warmer, shallower, nutrient-rich lake (mesotrophic or eutrophic lake). This is a problem because eutrophication diminishes the values and characteristics that people seek in a lake.

Dr. Hauer identified the following causes of shoreline erosion: 1) wave action from wind and from passing boats that increases shoreline slumping; 2) changes in water level, particularly on reservoirs and dam-controlled lakes; and, 3) the position and types of structures on a lake (e.g., docks, retaining walls, boat landings) that affect wave action and thus erosion.

C. Issues and Recommendations

1. Do Conservation Districts Have the Authority to Control Shoreline Erosion?

- Issue

The Montana legislature has designated conservation districts as the unit of government primarily responsible for addressing soil erosion and soil conservation. The conservation districts' involvement in the 310 permitting process is the most visible and touted component of the districts' responsibilities. However, conservation districts also have quite extensive and significant authority to prevent and control soil erosion. This includes the authority to conduct research, develop conservation plans, undertake projects, fund projects through a special mill levy, and develop land use regulations. A summary of these authorities is outlined below.

a. Policy

The legislature clearly envisioned that conservation districts would play a significant role in combating erosion. The declaration of policy in the conservation district statute states, in part, that:

> It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages . . . . (76-15-102, MCA)

b. Research and Identification of Problem

Conservation districts have the authority to study a soil or water conservation problem to determine its causes and scope, and to identify appropriate courses of action. Specifically, conservation districts have the power to:

> (a) conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and water quality as it pertains to saline seep and to the conservation,

development, utilization, and disposal of water and the preventive and control measures and works of improvement needed . . . . (76-15-401, MCA)

c. **Development of Soil and Water Conservation Plans.**

Conservation districts have the authority to develop comprehensive plans that propose actions to solve soil and water conservation problems. Specifically, conservation districts have the power to:

> (1) develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, range programs, tillage and grazing practices, and changes in use of land . . . . (76-15-402, MCA)

d. **Soil and Water Conservation Projects**

Conservation districts have broad authority to conduct soil and water conservation projects. This authority allows them (with the permission of private landowners if private land is involved) to implement their soil and water conservation plans.
Specifically, conservation districts have the power to:

> (1) conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of such lands or the necessary rights or interest in such land;
>
> (2) carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including but not limited to engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in 76-15-101(3) . . . .
>
> (4) construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;
>
> (5) take over, by purchase, lease, or otherwise, and administer any soil conservation, flood prevention, drainage, irrigation, water management,

erosion control, or erosion prevention project, or combinations thereof . . . . (76-15-403, MCA)

e. **Funding of Projects**

Conservation districts have broad powers to raise money for any administrative or other expense of the district. Generally, the power to raise funds is granted "whenever a board of supervisors deems it necessary." This includes the authority to:

- Borrow funds in an amount not to exceed 50 cents per acre of land within the district (76-15-505, MCA);
- Following a special election, issue bonds payable from revenues, assessments, or both (76-15-506, MCA); and,
- Make special assessments not to exceed 3 mills (76-15-623, MCA).

f. **Adoption of Land Use Regulations**

Finally, in the interest of conserving soil and water resources and preventing and controlling erosion, conservation districts have the authority to formulate land use regulations for any lands within the district. However, such regulations must first be approved through a referendum. (76-15-701, MCA)

Final Recommendation:

The statutory authority of conservation districts to address erosion is very broad, clearly providing them with the legal authority to address lakeshore erosion. Therefore, no statutory amendment is necessary to provide authority to address shoreline erosion problems. The EQC chose to make no recommendation on this issue.

2. Limitations to Conservation District Action

- **Issue**

While in statute conservation districts have a great deal of authority and power to address erosion, in practice, conservation districts are rarely able to fully exercise that authority. Conservation districts generally have only a single staff

person, members of the board of supervisors are all volunteers, and their priority clearly is the 310 permit process. It is fairly common for the board and staff to spend so much time dealing with 310 permit applications (site inspections, hearings, approval, follow-up, etc.) that they have little time to deal with discretionary responsibilities such as those for soil and water conservation. There is only so much time and energy that volunteer supervisors with limited staff can be expected to contribute. As a result, with some notable exceptions, other soil and water conservation responsibilities often fall through the cracks.

Final Recommendation:

To successfully carry out their responsibilities for erosion prevention and abatement under Title 75, chapter 15, and to address the problem of shoreline erosion, conservation districts may require additional funding and staff. The EQC chose to recommend, but not undertake, a search for additional mechanisms to fund conservation district responsibilities for erosion control.

HOUSE JOINT RESOLUTION NO. 17

INTRODUCED BY LARSON, MEASURE, GILBERT, COHEN, KADAS, DAVIS, WANZENRIED, MERCER, LEE, TOOLE, PINSONEAULT, HARDING, B. BROWN

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ENVIRONMENTAL QUALITY COUNCIL TO CONDUCT AN INTERIM STUDY ON THE NEED FOR AND THE NATURE OF UNIFORM STATE STANDARDS FOR THE PROTECTION AND APPROPRIATE DEVELOPMENT OF LAKESHORES.

WHEREAS, in section 75-7-201, MCA, the Legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes; and

WHEREAS, Montana contains many miles of lakeshore suitable for some type of development; and

WHEREAS, many of these lakeshore areas are experiencing or have the potential to experience intense development pressures; and

WHEREAS, most of these areas are fragile and susceptible to environmental and aesthetic damage; and

WHEREAS, in section 75-7-201, MCA, the Legislature has conferred the power to local governments to protect their lakes areas but has not provided the local governments with guidance regarding development standards for lakeshores.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Environmental Quality Council be requested to conduct an interim study on the need for and the nature of uniform state standards regarding the protection and appropriate development of lakeshores for the protection of public health, safety, and welfare.

(2) That the Environmental Quality Council be requested to consult with representatives of lakeshore property owners and others involved in this issue, including but not limited to: federal, state, tribal, and local government officials; industries; citizens; and other persons or groups with expertise in the regulation and development of lakeshores.

BE IT FURTHER RESOLVED, that the Environmental Quality Council report the findings of any study to the 53rd Legislature and present options for legislative consideration if the Council determines that options are necessary.

-End-

HJR 17
REFERENCE BILL

Appendix A

Appendix B

STATE OF MONTANA
ENVIRONMENTAL QUALITY COUNCIL
STATE CAPITOL
HELENA, MONTANA 59620
(406) 444-3742

Deborah B. Schmidt, Executive Director

GOV. STAN STEPHENS
Designated Representative
Art Wittich

HOUSE MEMBERS
Jerry Driscoll, Chairman
Ed Grady
David Hoffman
Bob Reney

SENATE MEMBERS
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Steve Doherty
Dave Rye
Bill Yellowtail

PUBLIC MEMBERS
Doug Crandell
John Fitzpatrick
Mona Jemison
Helen Waller

February 10, 1992

TO: Environmental Quality Council Members

FROM: Paul Sihler, Resource Scientist

RE: Results of Citizen Survey on Lakeshore Development

The following memo and questionnaire response key summarizes and analyzes the results of the citizen survey on lakeshore development. The HJR 17 Lakeshore Development Study Plan, adopted by the Council, calls for a survey to identify public perceptions of issues and problems surrounding lakeshore development. The survey results -- in combination with public fact finding hearings, panel discussions and public testimony -- are intended to aid the Council in deciding which problems and issues should be the focus of the lakeshore study.

Survey Methodology

During November 1991, staff developed a survey form that was subsequently mailed to 220 households, located primarily throughout northwestern Montana. The northwest region of the state was targeted due to its density of lakes and a high level of public awareness about lakeshore development issues. Surveys and stamped return envelopes were mailed to 40 realtors in Flathead, Lake and Missoula Counties; 13 Chambers of Commerce; 14 legislators; 11 Conservation Districts; members of the Whitefish City-County Lakeshore Committee; 35 members of the Lindbergh Lake Preservation Foundation; 85 members of the Flathead Lakers; and, several other people living in the Flathead

and Swan valleys. A total of 124 completed surveys were returned for a return rate of 56%.

Limitations on Interpreting Survey Results

Before reviewing the results of the survey, several caveats are necessary. First, because the sample of people who were surveyed is a representative sample (e.g., Flathead Lakers, realtors, chambers of commerce, etc.) rather than a random sample, the survey results cannot be extrapolated to characterize the perceptions of all Montanans or even all Montanans living in the northwestern region of the state. Statistically speaking, the results and conclusions of the survey can be used to describe only the population of people who returned the survey form.

Second, the survey results describe the respondents' perceptions of problems with lakes in Montana (e.g., water quality) rather than scientific or quantitative evidence of problems. Scientific and quantitative evidence may -- or may not -- support the presence of what respondents perceive to be problems. At the same time, the problems that respondents perceive may exist but, due to the lack of baseline data, the presence of the problem cannot be scientifically demonstrated.

Third, as several respondents noted, conditions vary widely from lake to lake. The survey results make broad generalizations and conclusions that may be representative of several but not necessarily every lake. Conversely, the overall survey results may also have been influenced by activities on one particular lake that may not accurately represent all lakes in the region. For example, respondents ranked timber harvest as a priority issue (#3) that should be addressed by the study. However, nearly all of those responses came from individuals who were concerned primarily with one lake.

MAJOR FINDINGS

1. Characteristics of Respondents

Of the people who returned the survey, about one-half said they lived more than five miles from a lake; slightly more than one-third said they lived on a lake. When asked which lake (s) they used most frequently, Flathead Lake was mentioned by 70% of the respondents, followed by Lindbergh Lake (17%), Whitefish Lake (12%) and Seeley Lake (6%). Thirty-five other lakes were mentioned, and most people said they used more than one lake.

As a group, respondents were reasonably knowledgeable about which level of government has primary responsibility for regulating lakeshores. Almost one-half identified local government as the primary authority, and many others

mentioned the role of Tribal government along southern Flathead lake or the role of federal agencies in managing lands adjacent to lakes or Flathead Lake water levels.

2. **Water quality is perceived to be the biggest issue.**

By all measures in the survey, respondents believe that water quality is the biggest issue stemming from lakeshore development. When asked to rate the condition of water quality in Montana's lakes, 88% of the respondents said there was a problem, with 54% indicating that the problem is moderate. Almost 60% said that, in lakes they use most frequently, water quality has declined over the last 5 years. Water quality and sewer/septic issues were identified most frequently as the problems that should be addressed by the EQC's lakeshore study.

3. Other perceived issues.

a. Noise: Noise on lakes, largely from boats or jet skis, was the third most frequently mentioned issue that respondents would like to see addressed by the EQC lakeshore study. About one-third of the respondents identified noise as a moderate problem while another one-third said noise was a minor problem.

b. Shoreline Erosion: The survey responses on shoreline erosion are mixed. About one-third of the respondents rated shoreline erosion as a moderate problem and another one-third said it was a minor problem. When asked how the condition of shoreline erosion had changed over the last five years, respondents were split: about one-half said "remained the same" and the other one-half said "declined".

c. Scenic Qualities: The survey responses on scenic qualities also are mixed. Nearly 60% of the respondents said that there has been no change over the last five years in the scenic qualities of the lakes they use most frequently, and only four people mentioned visual/aesthetic issues as something the EQC should address in the lakeshore study. When asked to rate the condition of the scenic quality of Montana's lakes and lakeshores, 39% said there is "no problem" and 26% said the problem is "minor".

4. **The majority of survey respondents are not satisfied with current lakeshore regulation and management.**

When asked if Montana's lakeshores are being properly developed and managed, 60% of the respondents said "no". Slightly more than one-half of the respondents believe that current statutes and regulations inadequately regulate lakeshore development (in contrast, only 6% think development is overregulated), and 61% believe that state and local government should be doing more than they presently are doing to protect the quality of Montana's lakes and lakeshores (only 3% think government should be doing less). About one-third of the respondents

believe that current statutes and regulations are adequate and that the state's lakes are being properly developed and managed.

In answering a question on what issues the EQC should address in its lakeshore development study, the fifth most common response was land use controls, such as zoning and subdivision requirements, and the sixth most common response was rate of development/density issues.

Conclusion

The survey results suggest two major conclusions: 1) respondents are not completely satisfied with the way lakes and lakeshores are presently managed and regulated; and 2) that water quality should be a focus of the HJR 17 Lakeshore Development study.

While the survey results provide a useful indicator of problems surrounding lakeshore development, they should not be evaluated in a vacuum. In charting the course of the HJR 17 Lakeshore Development study, it is important that the Council weigh the survey results along side other information, such as scientific evidence, testimony at public hearings and the presentations of experts. Next steps for the study include the Council making a decision on which problems/issues should be emphasized in the study; the lakeshore study subcommittee conducting a public hearing in the Flathead area; and, more narrowly defining the scope and magnitude of problems so that response options may be developed.

Environmental Quality Council

Citizen Survey on Lakeshore Development

****

1. If you are a citizen of Montana, is your primary residence located: (Please check one)

37% ☐ On a lake?

20% ☐ Within 5 miles of a lake?

44% ☐ More than 5 miles from a lake?

2. Which lake(s) do you use most frequently?

Flathead (87); Lindbergh (21); Whitefish (15); Seeley (7); Lake Mary Ronan (6); Cygnet, Holland, Swan, Foys (5); Crystal (4); Placid, Hauser (3); 8 lakes w/ (2); 19 lakes w/ (1).

(#)=the number of respondents who mentioned each lake

3. In the following categories, please rate what you believe to be the condition of Montana's lakes and lakeshores.

Category	Severe Problem	Moderate Problem	Minor Problem	No Problem	Don't Know
Water Quality	12%	54%	22%	12%	1%
Scenic Qualities	9%	25%	26%	39%	
Noise	16%	35%	31%	17%	1%
Shoreline Erosion	13%	35%	31%	16%	6%
Shoreline Development	8%	26%	26%	26%	13%
Shoreline Vegetation	8%	26%	26%	26%	13%
TOTALS	15%	35%	25%	20%	4%

Comments: Erosion on North shore of Flathead Lake; sewage leaking into lakes; Question is too general -- conditions vary by lake and lake area.

NOTE: Some percentages may not total 100% due to rounding error

4. Of the lakes in Montana that you use most frequently, how do you believe the following conditions have changed over the last 5 years?

Condition	Improved	Remained the Same	Declined	No Opinion
Water Quality	7%	32%	59%	2%
Scenic Qualities		57%	42%	1%
Noise	2%	33%	64%	2%
Shoreline Erosion	2%	46%	48%	5%
Shoreline Development	12%	31%	50%	7%
Shoreline Vegetation		49%	36%	14%
	4%	41%	50%	5% : TOTALS

Comments: Homes are better built; more R.V.'s; noise has increased; erosion worse in winter. Some respondents were confused over the use of the word "declined" for certain categories, i.e., noise.

5. How do you use these lakes? (Check all that apply)

☐ Drinking Water Supply

☐ Residence: WELL = 5

30 ☐ Primary HOUSEHOLD BUT NOT DRINKING = 2

43 ☐ Secondary

4 ☐ Commercial Business (Please describe)

Holland Lake Lodge plus other recreation - oriented businesses.

☐ Recreation:

96 ☐ Fishing 103 ☐ Boating

100 ☐ Scenery 100 ☐ Swimming

79 ☐ Picnics 22 ☐ Other

☐ Other Uses (Please specify)

Several use lake for irrigation; also photography, wildlife surveys and viewing, winter sports and water skiing.

6. Of the lakes you use most frequently, which level of government has primary authority for regulating lakeshore development?

17% ☐ Federal

28% ☐ State

46% ☐ Local

9% ☐ Don't know

7. To protect the quality of Montana's lakes and lakeshores, state and local government should be doing:

61% ☐ More than they are presently doing

30% ☐ About the same as they are presently doing

3% ☐ Less than they are presently doing

5% ☐ Don't know

8. Multiple federal, state, and local agencies have responsibility for managing and regulating lakeshores. Do you think these agencies are acting in a consistent and coordinated fashion?

21% ☐ Yes

30% ☐ Unsure

49% ☐ No

(Please explain) _____

_____

_____

9. Current statutes and regulations governing lakeshore development in Montana:

6% ☐ Overregulate development

37% ☐ Adequately regulate development

55% ☐ Inadequately regulate development

2% ☐ No opinion

10. Based upon your experience, do you believe that Montana's lakeshores are being properly developed and managed?

38% ☐ Yes

60% ☐ No 2% = YES and NO

(Please explain) _____

_____

_____

11. To assist the Environmental Quality Council in identifying the issues it should address in its lakeshore development study, please list the issues or problems surrounding lakeshore protection and development that concern you most.

SEE APPENDIX A (attached)

_____

_____

_____

_____

_____

If you would like to have your name placed on the Environmental Quality Council's lakeshore development mailing list so that you can be informed of upcoming meetings and public hearings, please provide the following information:

Name: _____

Affiliation: _____

Address: _____

_____

Thank you for your cooperation.

Please return this survey in the enclosed postage-paid envelope to:

Paul Sihler
Environmental Quality Council
State Capitol
Helena, MT 59620

Summary and Analysis of Comments Received on Survey Question # 11

11. **To assist the Environmental Quality Council in identifying the issues it should address in its lakeshore development study, please list the issues or problems surrounding lakeshore protection and development that concern you most.**

Question # 11 was included in the survey in order to provide respondents with an open-ended opportunity to make suggestions to the EQC on the problems and issues that should be addressed under the auspices of HJR 17.

Part I below is an analysis of the content of the comments that were received on question # 11. The analysis summarizes how frequently respondents identified particular categories of issues or concerns.

Part II is a list of the actual comments that were received in response to question # 11. While the comments have been reformatted, the substance and content of the comments remains intact.

Part I: Analysis of Content of Comments

Category of Issue/ Concern	# of Respondents Who Identified Issue/Concern
Sewer/Septic	31
Water Quality	27
Noise	15
Timber Harvesting *	15
Land Use Controls (zoning and subdivision)	14
Rate of Development/Density	12
Miscellaneous Issues	11
Erosion	8
Boats/Boat Safety	8

Category of Issue/ Concern	# of Times Issue/ Concern was Expressed
Government Regulation/Consistency	8
Decline in Fisheries/Habitat	6
Setbacks (from lake)	6
Flathead Lake Water Levels	5
Visuals/Aesthetics	4
Loss of Public Access	4
Transportation (e.g., of Hazardous Waste)	4
Loss of Shoreline Vegetation	4
Increased Recreational Use	2

* The majority of comments on timber harvesting came from respondents who use Lindbergh Lake; apparently there is long standing controversy surrounding timber harvest on private lands adjacent to Lindbergh Lake.

Part II: Responses to Question # 11

- Sewer systems; structures close to and on shore; shoreline damage done by boat wakes.
- The septic problem.
- Visual impact that is inconsistent with natural setting for lakeshore development from lakeview.
- "Too many departments to satisfy. A case in point is Eagle Bend's attempt to build a marina that has been ongoing for 3 or 4 years with dozens of agencies to satisfy."

- "If you would stop trying to eliminate businesses from developing but would help them and would regulate their pollution of our water way then you would be doing what I feel you have been paid taxes to do."

- "I am concerned about the increased motor boat traffic brought on by more residences."

- Septic contamination; run off contamination; recreational noise.

- Noise pollution. Jet skis, etc. are an absolute nuisance and cause much stress to neighbors due to noise and careless drivers. Noise is offensive and takes away from the quality of life.

- Over regulation by multiple levels of government.

- Sewer; erosion.

- Future rampant development e.g., Lake Tahoe, CA.

- Lakeshore erosion; unzoned housing; improper septic systems; clear cutting on higher elevations which cause fouling of lake water.

- Fishing and development of the species which can survive in certain lakes. Keep a good monitor of contamination.

- Septic locations; building densities/setback requirements; local control over development; dock/dock house construction standards; noise pollution

- Using water with recreational potential for irrigation and other wasteful purposes.

- Aesthetics; water quality; noise.

- Sewage draining into the lake.

- Restricting sewage disposal; maintain and enhance water quality; limit noise by limiting motorized craft; increase safety by limiting motorized craft

- Uniform laws and rules are not a good idea since lakes are different; water pollution; jet skis; trucks and trains that could end up in lake.

- Shoreline stabilization; protection of riparian zone; subdivision; water quality; forest practices (viewshed).

- "As I stated previously, the general overall quality will continue to deteriorate if we do not control what is happening to rivers and streams -- and Montana's reservoirs are in greater threat with no similar protection."

- Removal of naturally occurring vegetation; urbanization of the lakeshore.

- The lack of concern and confusion by government agencies. The various agencies do not know who is responsible for water quality, noise pollution, boating violations, shoreline protection.

- Sewage disposal requirements for habitation adjacent to lakes -- improving existing sanitation and requiring adequate sanitation for new structures; timber harvesting (e.g. clearcutting) on slopes adjacent to lakes.

- Assure water quality; set back regulations for structures; erosion control in developments; dock types and lengths; effective enforcement; establishing lakeshore protection zone (uniform).

- Water quality; clean up of sewage and septic systems; noise on some lakes.

- Water quality is my primary concern; protection of the trout spawning grounds on the two creeks that feed Lake Mary Ronan; an overly long and unsupervised ice-fishing season; a need to monitor lake water quality yearly by competent fish biologists.

- The water quality on all small lakes at least in Flathead Co. Government [should] be controlled as the private landowner is.

- [Lakeshores are] overly managed and consistent with usual government practices -- you let the rich and haves keep it and exclude the rest of us. Take me off the mail list -- I don't have the money to buy any influence on lake property.

- You are assuming we need more regulation by the very nature of this question. This whole questionnaire is biased towards obtaining more government regulation.

- Something should be done [about] the way people litter lake shores.

- Public access.

- Planning; density; sewer discharge and development; zoning; water quality.

- Who determines when a river becomes a lake? Is a wide spot in a river caused by a structure in the river a lake in the Swan drainages?

- Lack of real local control -- that is people make decisions on requests for projects who do not know about lakes and who do not care about them or their future; different parts of some lakes, Whitefish being one, require different applications of the rules due to different lakeshore characteristics.

- The most important concern for state waters is the maintenance of quality and ecological integrity. Rigid "state" laws and controls need to be established and enforced. Absolutely NO controls should be relinquished to city and county governments which are too susceptible to self serving political and economic interests. Control of water quality threatening pollutants (chemicals, etc.) resulting from development no matter how far back from the lakeshore they are; decibel control laws for motor boats to prevent ear pollution; establish strict zoning laws to prevent building and developments in naturally unacceptable areas such as swamps.

- More strict enforcement of regulations.

- Impact on local society; impact/congestion on lakes and shore; proper access for public boating, swimming.

- There seems to be a real lack of communication between my committee [Whitefish Lakeshore Protection Committee] and that of the city council. Because of the amount of money coming to our valley, I feel there is a certain amount of greed going on with a lot of Whitefish residents and the council seems willing and ready to please anyone and grant variances that are totally against lakeshore regulations. They are setting dangerous precedents.

  A project that has been very frustrating has been the expansion of the Whitefish golf course along Lost Coon Lake. We tried working with the golf association to get a set-back from the lake so that the damage to the lake would be lessened. Everything was agreed upon in conjunction with the city council. However, there has been a total disregard of the regulations in the actual construction of the course. In some areas along the lake, the construction and fairways are within ten feet of low water. We issued a complaint -- the Army Corps of Engineers were called in and did next to nothing.

  With this type of development happening and being allowed without following the regulations, I feel all our lakes are in jeopardy.

- 20 foot protection within high water; noise level standards; sewer control of septic systems.

- Control of subdivision; monitoring and regulation of logging in drainages; adequate and ongoing support for research into lake and drainage problems; the need for whole ecosystem analysis and management.

- Degradation of water quality and fish habitat.

- Sewage; logging; people control; noise control; for loons and wildlife there must be areas from which boats are excluded.

- Sewage; dirt roads; air pollution; role of zoning and planning in our fragile watershed areas; surface water runoff from houses, agriculture needs to be addressed for Flathead Lake.

- Concentrate your studies on protection of water quality. Prevention of pollution from boats and other water vehicles; sewage pollution; laws to prevent pollution from traffic on roads and railroads.

- Water quality problems arising from coliform and other bacteria appears to be the most significant change, but possibly only because we now measure these pollutants; water quality degradation from logging operations.

- logging practices; careless recreational use; pollution from poor septic systems or carelessness with toxic substances by home owners; spraying or ground use of herbicides.

- Dust control; improve control of lakeshore sewage deposits plus drain fields.

- Monitoring water quality in response to inadequate septic systems.

- logging; what will happen to lakeshores now owned by Champion and Plum Creek; increasing amount of recreational use in coming years.

- Water; septic; timber management; roads; boating.

- Water quality and future development.

- Logging on adjacent private lands that causes sedimentation and loss of scenic value.

- Logging in sensitive areas; improper septic installations; more boat limitations.

- Sewage disposal; logging practices; lot size and usage; noise; zoning.

- Rules to regulate the use of jet skis.
- Overdevelopment.
- Overdevelopment resulting in noise and water pollution.
- Water pollution; noise pollution.
- Leaking septic and sewer systems.
- Extreme care to maintain water quality and prevent pollution.
- Water quality; shoreline -- both vegetation and general appearance.
- Overbuilding and pollution; septic tanks outdated and not surveyed and replacement REQUIRED. Conflicting ideas between state and tribal governments.
- Lakeshore development as it leads to eutrophication; habitat destruction for fisheries, birds, and other wildlife; loss of scenic qualities and other environmental amenities such as quietness; loss of access.
- Lots being subdivided into too small parcels; building allowed too close to shoreline; commercial development on lake being overdone.
- Septic systems.
- The transportation of gas, oil and hazardous substances along lakeshores.
- Upstream pollution from sub-standard municipal and industrial treatment of effluent; clearcutting on national forest and BLM lands; resist pressures to release water to downstream interests to the detriment of local needs; insist that Bonneville and Kerr dam operations work to mitigate problems of erosion and damage to fisheries.
- Bars -- too many!; water quality; sewer systems -- the lake is no place for raw sewage; too many power boats.
- Noise pollution.
- Water quality.

- Building density; noise pollution; upstream mining, logging and sewer systems.
- Lake drawdowns.
- Pollution; noise.
- Adequate toilet facilities in high public use areas; avoidance of dense development; licensing and appropriate monitoring of septic systems; appropriate setback of residence from lakeshores; monitoring upstream activity that would contribute in sufficient magnitude to upstream erosion; unstable water levels in Flathead river and Hungary Horse dam.
- Water quality -- sewage waste into lake.
- overpopulation and building for small areas.
- Septic systems from older homes and cabins along lakeshore that are grandfathered.
- General lack of density standards for lakeshore homes/septic systems; lack of inspection for old/failing systems; lack of regulation for shoreline transportation of hazardous waste; damage to fisheries by headwaters logging and sedimentation.
- Allowing speed boats/skiers to travel at high speeds too close to shore causes erosion; noise; lack of proper control and enforcement of present laws; more officers and patrol boats needed.
- Failed septic systems.
- Water quality.
- Not enough boat access.
- Alteration of shoreline; violation of dock regulations; noise from new ski type motorized vehicles; cutting trees which should screen some areas; encourage building to fit the setting.
- The management of Kerr dam and how it changes the level of Flathead lake, which in turn affects habitat, fisheries and wildlife.
- Water quality and erosion.

- High density near-shore development; maintenance and overuse of recreation areas; fluctuating lake levels.

- Overpopulation of lakeshores.

Appendix C

STATE OF MONTANA
ENVIRONMENTAL QUALITY COUNCIL
STATE CAPITOL
HELENA, MONTANA 59620
(406) 444-3742

Deborah B. Schmidt, Executive Director

GOV. STAN STEPHENS
Designated Representative
Art Wittich

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Dave Rye
Bill Yellowtail

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Doug Crandall
John Fitzpatrick
Mona Jamison
Helen Waller

January 10, 1992

TO: Environmental Quality Council Members

FROM: Paul Sihler, Resource Scientist

RE: Results of Local Governing Body Survey on Lakeshore Development

The HJR 17 Lakeshore Development Study Plan adopted by the Council calls for a survey of local governing bodies to identify: (1) which counties have adopted lakeshore regulations pursuant to 75-7-201, MCA; (2) the level of resources local governing bodies currently commit to lakeshore management; and, (3) lakeshore management issues and problems.

During October, 1991, EQC staff developed a survey that subsequently was mailed to 57 local governing bodies throughout the state. The following memo and attachments summarize the results of the 35 survey forms that were returned (61% response rate). It should be noted, however, that the majority of the questions on the survey form (question #'s 4 through 13) can only be answered by governing bodies that administer a lakeshore program. As a result, the majority of the "major findings" presented on the next page are based upon the responses of those five governing bodies with lakeshore programs rather the entire sample of 35 governing bodies that responded. Please see the attached "questionnaire response key" for a complete summary of the responses.

MAJOR FINDINGS

1. **Only four local governing bodies responding to the survey have adopted lakeshore regulations.**

State law (75-7-207, MCA) requires every governing body having jurisdiction over an area containing a natural lake with a surface area of 160 acres or greater to have adopted lakeshore regulations by January 1, 1976. The results of the survey indicate that while 13 governing bodies have jurisdiction over at least one lake, to date, only Flathead, Lake and Lincoln Counties and the Salish-Kootenai Tribe (pursuant to tribal, not state, law) have adopted lakeshore regulations. A fifth county -- Anaconda-Deer Lodge -- is in the process of adopting regulations. In addition, several years ago Missoula Co. drafted but never adopted lakeshore regulations.

The governing bodies that have been most aggressive about developing lakeshore regulations, and that have the most active lakeshore management program -- Flathead and Lake Counties and the Salish-Kootenai Tribe -- are all located around Flathead Lake.

2. **Local governing bodies have limited staff and budget to dedicate to lakeshore management.**

Of the nine governing bodies that reported having a planning staff, only four (Flathead, Lake and Lincoln Counties and the Salish-Kootenai Tribe) dedicate time to lakeshore management and regulation. The Salish-Kootenai Tribe's lakeshore management program is well supported with 3 FTE and an annual budget of $80,000. In contrast, the three counties respectively reported dedicating 33%, 40% and 5% of 1 FTE to lakeshore management.

3. **Between 1990 and 1991, Flathead Co. reports a 21% increase and Lake Co. a 33% increase in the number of work permit applications received.**

The reported increase in the number of work permits received appears to be symptomatic of a general increase in the rate of development along lakeshores. This trend is consistent with reports on housing starts and realty transactions.

4. **In addition to regulations promulgated under the lakeshore statute, local governing bodies use subdivision and zoning laws to regulate land use along lakeshores.**

Flathead, Lake and Lincoln Counties reported that regulations promulgated under the authority of the lakeshore statute are used as the primary tool (in 60-75% of all instances) for regulating land use along lakeshores. Subdivision law is used as the primary regulatory tool on between one-quarter and one-third of the lakeshores, and zoning is used on only 3-15% (depending upon the particular county) of the lakeshores.

A potential consequence of using several laws to regulate lakeshores is that the requirements may not be consistent from one lake to the next, or even between different locations on the same lake. For example, a home constructed along a lake in an area that has been zoned or subdivided must have a 50 foot setback while a home that is constructed in an area that is regulated by lakeshore regulations is only required to have a 20 foot setback. The distance of the setback can effect the retention of vegetation along the lakeshore and the potential for runoff into the lake.

The requirements under zoning and subdivision law in contrast to lakeshore regulations will be the subject of a future staff memo to the Council.

5. **The four local governing bodies that have lakeshore programs all responded affirmatively to a question that asked whether the legislature should amend state law to improve or simplify the regulation of lakeshores.**

The specific responses of each individual to this question are contained on page 58. Generally, the comments suggest clarifying and strengthening the lakeshore statute.

QUESTIONNAIRE RESPONSE KEY

Environmental Quality Council
Local Governing Body Survey on Lakeshore Development

1. Has your County adopted lakeshore regulations (e.g., pursuant to 75-7-201, MCA) to regulate work that will alter the course, current, or cross-sectional area of a lake or lakeshore?

   4 YES 30 NO

   1 NO, BUT DEVELOPING

2. Approximately how many natural lakes 160 acres or larger in size fall under your County's jurisdiction?

   22 0 11 1-10 2 11+

3. Whom should we contact in the future either for additional information or to review study recommendations?

NAME: _____

ADDRESS: _____

PHONE: _____

> Questions 4-13 may not apply to you if your County has not adopted lakeshore development regulations. In this case, please answer questions 1-3 and return this form in the enclosed postage-paid envelope.

4. How many planning staff does your County employ?

Nine local governing bodies reported having a planning staff. Staff sizes ranged from a low of .5 FTE (1 Co.) to a high of 5 FTE (1 Co. + 1 Tribe). The most common staff size was 1 FTE (4 Co.)

What percentage of their time is dedicated to lakeshore management and regulation?

Only four local governing bodies reported that planning staff time is spent on lakeshore management. The Salish-Kootenai Tribe has 3 FTE solely dedicated to lakeshore management, while the three Counties respectively reported that 5%, 33 %, and 40% of 1 FTE work on lakeshore management.

5. What is your annual budget for lakeshore management?

Flathead Co. = $15-20,000
Lake Co. = $100,000 (entire planning budget)
Salish-Kootenai Tribe = $80,000

6. How many lakeshore development permit applications did your County process last year?

Flathead Co. = 133 (up from 110 in 1990)
Lake Co. = 113 (through 10/21/91; up from 85 in 1990)
Lincoln Co. = 5
Salish-Kootenai Tribe = 212

7. Can you identify a trend over the last 5 years in the number of lakeshore permit applications you received annually? (Please explain)

_1_ YES _1_ NO

Lake Co. identified an annual growth rate of 5-10% in the number of permit applications received.

8. Local governing bodies use a number of tools to regulate lakeshore development. To what extent are the shorelines that fall under your jurisdiction regulated **primarily** through the following categories?

a. Zoning ___%

Flathead Co. = 3-5%
Lake Co. = 10-15%

b. Subdivision law ___%

Flathead Co. = 33%
Lake Co. = 25%
Lincoln Co. = 24%

c. Separate lakeshore regulations (e.g., promulgated pursuant to 75-7-201, MCA, or other statute) ___%

Flathead Co. = 71%
Lake Co. = 60-65%
Lincoln Co. = 74%

d. Other (Please specify) ___%

Lincoln Co. = 1% (floodplain regulations)
Salish-Kootenai Tribe = 100% (Tribal regulations)

9. What types of violation complaints (e.g., construction within setback, lack of permit, destruction of shoreline vegetation, erosion, etc.) have you received in the last year regarding development along lakeshores?

Flathead Co.: Construction w/o a permit
Lake Co.: 1) Construction w/o a permit; 2) Violation of conditionally approved permits; 3) Poor lake front management.
Lincoln Co.: Destruction of shoreline vegetation.

10. Approximately how many violation complaints have you received in the last year for each category you identified in question 9?

Flathead Co.: 14
Lake Co.: 1) 35; 2) 17; 3) approximately 20.
Lincoln Co.: 2
Salish-Kootenai Tribe: 85

11. Approximately how many of those violation complaints resulted in an enforcement action that was resolved through:

a. Administrative action by the planner? ___

Lake Co. = approximately 24
Salish-Kootenai Tribe = 28

b. The County Commission? ___

Lake Co. = 7
Salish-Kootenai Tribe = 7

c. Legal action? ___

Flathead Co. = 14
Lake Co. = 2

d. Other measures? ___

Lake Co. = approximately 39 (violation did not exist or complaint was invalid)

12. In your opinion, what are the major problems, if any, surrounding lakeshore development?

PLEASE SEE ATTACHED SUMMARY CONTAINED ON PAGE 57

13. In your opinion, are there any changes the Legislature should make in state law to improve or simplify the regulation of lakeshore development? Please be specific.

PLEASE SEE ATTACHED SUMMARY CONTAINED ON PAGE 58

Thank you for your cooperation.

Please return this survey in the enclosed postage-paid envelope to:

Paul Sihler
Environmental Quality Council
State Capitol
Helena, MT 59620
Ph. 444-3742

SUMMARY OF RESPONSES TO QUESTION #12

12. In your opinion, what are the major problems, if any, surrounding lakeshore development?

Respondent #1

1a. The statute is unclear in defining lakeshore development activity that is to be regulated. Our office takes a necessarily broad view in regulating decks, hot tubs, boat houses, roads, boat anchoring buoys, etc.

1b. The 20 ft. setback is inadequate as environmental and aesthetic impacts are far reaching.

Respondent #2

2a. Solid "grandfathered" structures that cause major erosion problems.

2b. Construction materials treated with a toxic preservative that causes water pollution and fish kills.

2c. Construction too close to property lines which infringes upon neighbors.

2d. Boat houses that obstruct views and are prone to wave damage.

Respondent #3

3a. Dam management (artificially high and low water levels)

3b. Poor construction

3c. Lack of public education

3d. Inadequate funding

3e. The lakeshore protection zone is too small; 20 ft. is inadequate.

Respondent #4

4. No hard and fast rules governing disturbance, or construction. What is allowed in one county may not be allowed in another. In addition, each lake is different and the affect on the lake is difficult for a planner to evaluate if he or she has no formal training in lake ecosystems. Lakeshore construction and disturbance would be better handled through a different agency, in my mind.

SUMMARY OF RESPONSES TO QUESTION #13

13. In your opinion, are there any changes the Legislature should make in state law to improve or simplify the regulation of lakeshores? Please be specific.

Respondent #1

1a. Section 75-7-204, MCA should be expanded to clarify that offshore improvements such as boat anchoring buoys and floating marinas are addressed, as well as all construction, demolition, excavation, fill, and shoreline modifications in or protruding into the lakeshore protection zone are addressed.

1b. Edit and reconcile 75-7-207(3) with 75-7-211 concerning permit issuance and simplified procedure.

1c. Allow for special advisory bodies representing specific lakes (instead of just the county planning board) to review and comment on projects.

1d. Expand the lakeshore protection zone to 50-100 feet back from the high water mark; 20 feet is inadequate.

Respondent #2

2a. Increase the lakeshore protection zone to a minimum of 50 horizontal feet.

2b. There should be stronger penalties for lakeshore violations.

2c. Do Not set statewide minimum standards. Every lake is different and each requires special concerns. Standards are best set at the local level.

Respondent #3

3. I think the program should be administered (or at least reviewed) by the Department of Fish, Wildlife, and Parks with input from local governments. A longer time for review to insure joint review between county and state agencies.

Respondent #4

4a. All structures protruding lakeward should be constructed with flow-thru features; the first 10-15 feet is very critical to prevent erosion.

4b. All mooring structures should have a setback of 20 feet from property lines to keep property owner activity within their own riparian property.

4c. There should be only one mooring buoy per 100 feet of lakeshore (this is approximately the area required to swing a boat in mooring).

4d. Subdivisions should have lots 100 feet or more fronting the lakeshore with at least a 20-40 foot reserve for future erosion. This would also keep buildings back from the waters edge.

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